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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ARMANDO ENCINAS AGUIRRE,

Defendant and Appellant.

D055384

(Super. Ct. No. JCF21489)

APPEAL from a judgment of the Superior Court of Imperial County, Donal B. Donnelly, Judge. Affirmed.

Armando Encinas Aguirre entered a negotiated plea of no contest to one count of possession of heroin (Health & Saf. Code, § 11350, subd. (a)) and admitted that he violated his probation from a previous case. Pursuant to the plea agreement, the trial court sentenced Aguirre to the upper term of three years in prison, suspended execution of the sentence and placed him on three years of formal probation. Following a contested hearing in which Aguirre was found to have violated a term of his probation, the court

revoked his probation and ordered the execution of the previously suspended three-year prison sentence.

### FACTUAL BACKGROUND

On November 14, 2007, Brawley police received an anonymous tip that Aguirre was smoking marijuana in his front yard through an aluminum can. When a police officer arrived at the residence, Aguirre, who was standing by the sidewalk, dropped the aluminum can and moved to the front yard. Aguirre refused to comply with the officer's directions, and a struggle ensued. Backup officers arrived, and they were able to control Aguirre. After arresting Aguirre, police found a Marlboro cigarette package that contained a clear plastic wrapper with black tar heroin in Aguirre's right front pants pocket. Police also found an Altoids box, which contained a hypodermic syringe and a small amount of marijuana, in Aguirre's pants pocket.

On May 23, 2008, the trial court sentenced Aguirre in accordance with the terms of the plea agreement, which called for Aguirre to be released on probation. Five days later, Aguirre reported to his probation officer, who administered a drug test. The test was positive for opiates. Aguirre failed to respond to a letter sent by his probation officer in July. In September Aguirre was instructed to report in person to the probation office, but failed to do so. The probation officer filed a motion to revoke Aguirre's probation. When Aguirre failed to appear for the court hearing on the probation violation, the court issued a no-bail bench warrant for his arrest.

On October 30 Aguirre admitted having violated his probation in another case, and the prosecution moved to withdraw the probation violation in this case. The court

sentenced Aguirre to 180 days in jail in the other case. The court also directed Aguirre to report to the probation office within 48 hours of his release from custody.

On February 14, 2009, Aguirre was released from jail, but failed to report to the probation office as directed by the court. The following month, the probation officer filed a motion to revoke Aguirre's probation in this case. On April 14 Aguirre failed to appear at his hearing on the probation violation, and the court again issued a no-bail bench warrant. On May 18 the revocation hearing was held, and the court found that Aguirre had violated his probation.

### DISCUSSION

Appointed appellate counsel has filed a brief setting forth the evidence in the superior court. Counsel presents no argument for reversal but asks this court to review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436. Pursuant to *Anders v. California* (1967) 386 U.S. 738, counsel refers to as a possible, but not arguable, issue: whether, after revoking Aguirre's probation, the trial court abused its discretion by ordering the execution of the previously suspended three-year prison sentence rather than reinstating Aguirre on probation.

We granted Aguirre permission to file a brief on his own behalf. He has not responded.

A review of the entire record pursuant to *People v. Wende, supra*, 25 Cal.3d 436, including the possible issue referred to pursuant to *Anders v. California, supra*, 386 U.S. 738, has disclosed no other reasonably arguable appellate issue. Competent counsel has represented Aguirre on this appeal.

DISPOSITION

The judgment is affirmed.

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AARON, J.

WE CONCUR:

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MCDONALD, Acting P. J.

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McINTYRE, J.